

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82995; File No. SR-CboeBZX-2018-001)

April 5, 2018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF Under BZX Rule 14.11(f)(4), Trust Issued Receipts

On January 5, 2018, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade the shares (“Shares”) of the GraniteShares Bitcoin ETF (“Long Fund”) and the GraniteShares Short Bitcoin ETF (“Short Fund”) (each a “Fund” and, collectively, “Funds”) issued by the GraniteShares ETP Trust (“Trust”) under BZX Rule 14.11(f)(4). The proposed rule change was published for comment in the Federal Register on January 18, 2018.³ On February 22, 2018, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ The Commission has received no comment letters on the proposed rule change. This

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 82484 (Jan. 11, 2018), 83 FR 2704 (Jan. 18, 2018) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 82759 (Feb. 22, 2018), 83 FR 8719 (Feb. 28, 2018). The Commission designated April 18, 2018 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal⁷

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts on the Exchange.⁸ Each Fund will be a series of the Trust, and the Trust and the Funds will be managed and controlled by GraniteShares Advisors LLC (“Sponsor”). Bank of New York Mellon will serve as administrator, custodian, and transfer agent for the Funds. Foreside Fund Services, LLC will serve as the distributor of the Shares (“Distributor”). The Trust will offer Shares of the Funds for sale through the Distributor in “Creation Units” in transactions with “Authorized Participants” who have entered into agreements with the Distributor.⁹

According to the Exchange, the Long Fund’s investment objective will be to seek results (before fees and expenses) that, both for a single day and over time, correspond to the performance of lead month bitcoin futures contracts listed and traded on the Cboe Futures Exchange, Inc. (“Benchmark Futures Contract”). Conversely, the Short Fund’s investment

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ The Commission notes that additional information regarding the Trust, the Shares, and the Funds, including investment strategies, calculation of net asset value (“NAV”) and indicative fund value, creation and redemption procedures, and additional background information about bitcoin, the bitcoin network, and bitcoin futures contracts, among other things, can be found in the Notice (see supra note 3) and the registration statement filed with the Commission on Form S-1 (File No. 333-222109) under the Securities Act of 1933, as applicable.

⁸ Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

⁹ See Notice, supra note 3, at 2707.

objective will be to seek results (before fees and expenses) that, on a daily basis, correspond to the inverse (-1x) of the daily performance of the Benchmark Futures Contracts for a single day. Each Fund generally intends to invest substantially all of its assets in the Benchmark Futures Contracts and cash and cash equivalents (which would be used to collateralize the Benchmark Futures Contracts), but may invest in other U.S. exchange listed bitcoin futures contracts, as available (together with Benchmark Futures Contracts, collectively, “Bitcoin Futures Contracts”).¹⁰

Further, the Exchange states that, in the event that position, price, or accountability limits are reached with respect to Bitcoin Futures Contracts, each Fund may invest in U.S. listed swaps on bitcoin or the Benchmark Futures Contracts (“Listed Bitcoin Swaps”). In the event that position, price, or accountability limits are reached with respect to Listed Bitcoin Swaps, each Fund may invest in over-the-counter swaps on bitcoin or the Benchmark Futures Contracts (“OTC Bitcoin Swaps,” and together with Listed Bitcoin Swaps, collectively, “Bitcoin Swaps”).¹¹

II. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2018-001 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹² to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below,

¹⁰ See Notice, supra note 3, at 2705-2706.

¹¹ See id. at 2706.

¹² 15 U.S.C. 78s(b)(2)(B).

the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."¹⁴

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹⁵

¹³ Id.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,¹⁶ in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. In its proposal, the Exchange states that each Fund, in the event that position, price, or accountability limits are reached with respect to Bitcoin Futures Contracts, may also invest in Listed Bitcoin Swaps. What are commenters' views on the current availability of Listed Bitcoin Swaps for trading? What are commenters' views on the ability of the Funds to invest in Listed Bitcoin Swaps in the event that position, price, or accountability limits are reached with respect to Bitcoin Futures Contracts?
2. In its proposal, the Exchange states that each Fund, in the event that position, price, or accountability limits are reached with respect to Listed Bitcoin Swaps, may also invest in OTC Bitcoin Swaps. What are commenters' views on the current availability of OTC Bitcoin Swaps for trading? What are commenters' views on the ability of the Funds to invest in OTC Bitcoin Swaps in the event that position, price, or accountability limits are reached with respect to Listed Bitcoin Swaps?
3. What are commenters' views on whether the Funds would have the information necessary to adequately value, including fair value, the Bitcoin Futures Contracts and

¹⁶ See supra note 3.

the Bitcoin Swaps when determining an appropriate end-of-day NAV for the Funds, taking into account any volatility, fragmentation, or general lack of regulation of the underlying bitcoin markets?

4. What are commenters' views on the potential impact of manipulation in the underlying bitcoin markets on the Funds' NAV? What are commenters' views on the potential effect of such manipulation on the valuation of a Fund's Bitcoin Futures Contracts? What are commenters' views on the potential effect of such manipulation on the pricing of a Fund's Bitcoin Swaps?
5. What are commenters' views on how the Funds' valuation policies would address the potential for the bitcoin blockchain to diverge into different paths (i.e., a "fork")?
6. What are commenters' views on the price differentials and trading volumes across bitcoin trading platforms (including during periods of market stress) and on the extent to which these differing prices may affect the trading of the Bitcoin Futures Contracts and, accordingly, trading in the Shares of the Funds?
7. What are commenters' views on how the substantial margin requirements for Bitcoin Futures Contracts, and the nature of liquidity and volatility in the market for Bitcoin Futures Contracts, might affect the Trust's ability to meet redemption orders? What are commenters' views on whether and how the margin requirements for Bitcoin Futures Contracts, and the nature of liquidity and volatility in the market for Bitcoin Futures Contracts, might affect a Fund's use of available cash to achieve its investment strategy?
8. What are commenters' views on the possibility that the Funds—along with other exchange-traded products with similar investment objectives—could acquire a

substantial portion of the market for Bitcoin Futures Contracts or the Bitcoin Swaps?

What are commenters' views on whether such a concentration of holdings could affect the Funds' portfolio management, the liquidity of the Funds' respective portfolios, or the pricing of the Bitcoin Futures Contracts or the Bitcoin Swaps? What are commenters' views on the Exchange's representation that it expects significant liquidity to exist in the market for Bitcoin Futures Contracts?

9. What are commenters' views on possible factors that might impair the ability of the arbitrage mechanism to keep the trading price of the Shares tied to the NAV of each Fund? With respect to the market for Bitcoin Futures Contracts, what are commenters' views on the potential impact on the arbitrage mechanism of the price volatility and the potential for trading halts? What are commenters' views on whether or how these potential impairments of the arbitrage mechanism may affect the Funds' ability to ensure adequate participation by Authorized Participants? What are commenters' views on the potential effects on investors if the arbitrage mechanism is impaired?
10. What are commenters' views on the risks of price manipulation and fraud in the underlying bitcoin trading platforms and how these risks might affect the Bitcoin Futures Contracts market or the Bitcoin Swaps? What are commenters' views on how these risks might affect trading in the Shares of the Funds?
11. What are commenters' views on how an investor may evaluate the price of the Shares in light of the risk of potential price manipulation and fraud in the underlying bitcoin trading platforms and in light of the potentially significant spread between the price of the Bitcoin Futures Contracts or the Bitcoin Swaps and the spot price of bitcoin?

12. What are commenters' views on whether the two bitcoin futures exchanges represent a significant market, i.e., a market of significant size?

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-CboeBZX-2018-001 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-CboeBZX-2018-001. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CboeBZX-2018-001 and should be submitted by [insert date 21 days from the date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(57).